

FILED

OCT 08 2019

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

TIMOTHY C. HAITHCOX,

Petitioner,

vs.

LYNN GUYER, STATE OF
MONTANA,

Respondents.

Cause No. CV 19-59-H-DLC-JTJ

ORDER

This case comes before the Court on Petitioner Timothy C. Haithcox's application for writ of habeas corpus under 28 U.S.C. § 2254. Haithcox is a state prisoner proceeding pro se.

On October 2, 2019, Haithcox was directed to file an Amended Petition on the Court's standard form. (Doc. 5.) Haithcox did not file the Amended Petition as directed, but instead advised the Court he seeks leave to dismiss the pending petition so that he may pursue postconviction relief in the state district court. (Doc. 6.) Alternatively, Haithcox also asks the Court to "suspend" the current proceedings. *Id.* It appears Haithcox may be seeking a stay and abeyance of the matter.

While the Court declines to issue a stay at this juncture, Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides an avenue for voluntary dismissal.

Accordingly, Haithcox's Motion to Dismiss his petition (Doc. 6) is GRANTED. This matter is DISMISSED **without prejudice** pursuant to Fed. R. Civ. P. 41(a)(1)(B). Haithcox may return to this Court when he has fully exhausted his state remedies.

DATED this 8th day of October, 2019.

/s/ John Johnston

John Johnston

United States Magistrate Judge